

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-758

June 17, 2003

PUBLIC UTILITIES COMMISSION
Investigation Into Use of Central Office
Codes (NXXS) By New England Fiber
Communications, LLC d/b/a/ Brooks Fiber

**AMENDED ORDER REQUIRING
THE NANPA TO RECLAIM NXX
CODES AND BROOKS TO
TERMINATE REMAINING RX
CUSTOMERS; ORDER REQUIRING
AMENDMENT TO TERMS AND
CONDITIONS; ORDER CLOSING
INVESTIGATION**

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, pursuant to a Petition for Limited Reconsideration filed by New England Fiber Communications, LLC d/b/a Brooks Fiber (Brooks), we amend the Order we issued on May 7, 2003 to correct an oversight. The amended Order excludes an NXX (464) assigned to Westbrook, Maine, from the list of NXX Codes assigned to Brooks that the North American Numbering Plan Administrator (NANPA) and/or the Pooling Administrator must reclaim.

II. DISCUSSION

The May 7 Order ordered the NANPA to “reclaim the 54 NXX codes assigned to New England Fiber Communications, LLC d/b/a/ Brooks Fiber that are assigned to locations outside of Brooks Fiber’s Portland area exchange (NXXs 228 and 239).” Subsequent to the issuance of the May 7 Order, Brooks informed the Commission that it provided two-way facilities-based service in Westbrook using NXX code 464. On May 27, 2003, Brooks filed a timely Petition for Limited Reconsideration.

In our previous orders we characterized the only exchange in Maine in which Brooks offers facilities-based local service as the “Portland area exchange,” which included Westbrook along with Portland and South Portland. We based this characterization on Brooks’s Terms and Conditions Section 4.2.1, which states “Where facilities are available, the Company’s service area consists of the local exchange as described in Attachment A.” See Order Adopting Factual and Legal Conclusions (June 22, 1999), Appendix A, ¶ 3. Nothing in the Terms and Conditions is labeled “Attachment A.” We previously considered the map located at page 1.4-A and labeled “local Exchange Service Area” to be “Attachment A,” although it fails to use that designation and is identified in the Table of Contents only as “Map attachment.”

Both in 1999 and now, we interpret this map as depicting the “Portland area exchange.”¹ In 1999, we stated “Attachment A is a map that depicts the areas included within the municipal boundaries of Portland, South Portland and Westbrook.” June 22, 1999 Order, Appendix ¶ 3. In 1999, we also recognized (as we did not in the May 7, 2003 Order) that the 464 code was one of the three (along with 228 and 239) assigned to the “Portland area exchange.” *Id.* ¶ 4. Our failure to include 464 in the list of NXX codes that the NANPA should not reclaim was therefore an oversight.

We note, however, that Brooks, in its Petition, refers to its local service area as consisting of the “the Portland exchanges” and “[t]he Westbrook exchange,” which it states is “included in the Brooks Fiber Local Exchange Service Area map that is set forth on page 1.4A of Brooks Fiber Maine Tariff No. 1.” Nothing in Brooks’s Terms and Conditions, however, clearly indicates that it has a “Westbrook” exchange that is separate from the rest of the Portland area exchange. The map does not indicate the municipal boundaries (which are shown) also serve as exchange boundaries. The Terms and Conditions appear to indicate that Brooks has only one local exchange.²

Nevertheless, section 4.2.2 of the Terms and Conditions states:

4.4.2 Local Calling Areas: Exchanges included in the local calling area for each of the NXX designations may be found in the telephone directory published by the dominant exchange service provider in the Customer’s exchange service area.

The Verizon directory shows different local calling areas (basic service calling areas, or BSCAs) for the Portland exchange (which includes South Portland) and the Westbrook exchange.³ Subsequent communication with Brooks indicates that the 464

¹ The term “Portland area exchange” is ours; Brooks’s Terms and Conditions do not provide a name.

² The June 22, 1999 Order did recognize at least a nominal difference between the three codes, stating:

Only 3 of the CO codes are assigned to locations within the Brooks Portland area exchange. Those three codes are Portland 228, South Portland 239 and Westbrook 464.

Order (June 22, 1999) Appendix ¶ 4. It did not, however, recognize separate exchanges.

³ The Verizon Portland BSCA consists of the Portland exchange itself plus Cumberland, Freeport, Gorham, Gray, New Gloucester, Old Orchard Beach, Pownal, Scarborough, Westbrook, West Gray, Windham, and Yarmouth. The Verizon Westbrook BSCA consists of the Westbrook exchange plus the Portland, Gorham, Windham and Scarborough exchanges. Thus, the Portland BSCA includes a number of

code is actually used only for customers located in Westbrook. The 228 and 239 codes are used only for customers located in the municipalities of Portland and Westbrook. The fact that Westbrook customers have a different local calling area than the other customers in the "Portland area exchange" makes it necessary to use one of the codes exclusively for the Westbrook customers so that their calls will be rated correctly for billing purposes. Because of the different local calling areas, we find that Brooks should establish a separate Westbrook exchange.⁴

Accordingly, we

ORDER

1. AMEND our Order of May 7, 2003, to order the North American Numbering Plan Administrator (NANPA) and/or the Pooling Administrator, on August 6, 2003, to reclaim the 53 NXX codes assigned to New England Fiber Communications, LLC d/b/a/ Brooks Fiber⁵ that are assigned to locations outside of Brooks Fiber's Portland area exchange (NXXs 228, 239 and 464); the NANPA and/or Pooling Administrator shall report to the Commission when it has taken this action; and

2. ORDER New England Fiber Communications, LLC d/b/a Brooks Fiber (Brooks) to propose amendments to its Terms and Conditions that (a) will establish a Westbrook exchange consisting of the municipality of Westbrook, Maine (or the Verizon Maine Westbrook exchange), (b) clearly names and defines the Westbrook exchange and the exchange (consisting of the municipalities of Portland and South Portland) that constitutes the remainder of the "Portland area exchange" previously identified by the

exchanges that are not included in the Westbrook BSCA. The Westbrook BSCA includes no exchanges that are not also part of the Portland BSCA.

⁴ Brooks should not, however, establish separate Portland and South Portland exchanges. Both municipalities are in the Verizon Portland exchange, so that all customers in the two municipalities have the same local calling area.

⁵ For the NXX assigned to Eliot (686), the Pooling Administrator will reclaim only the 1000 numbers (Block 9) assigned to Brooks Fiber. Other blocks of 1000 numbers in the 686 code are assigned to other carriers.

Commission in this docket, and (c) provides a clear reference to any exchange boundary map(s) that may be included in the Terms and Conditions.⁶

Dated at Augusta, Maine, this 17th day of June, 2003.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

⁶ The boundary of the "Portland area exchange" differs from the Verizon Portland and Westbrook exchanges in that the Verizon exchanges do not strictly follow municipal lines. Moreover, the Verizon Portland exchange includes two municipalities (Falmouth and Cape Elizabeth) that are not included in the current Brooks Portland area exchange. To the extent that a CLEC's exchange boundaries differ from those of the ILEC serving in the CLEC's local exchanges, Chapter 140, § 2(A)(4) and (5) require the CLEC to file exchange boundary maps. Those maps must meet the specifications of Chapter 140, § 1(C) and (D).

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.